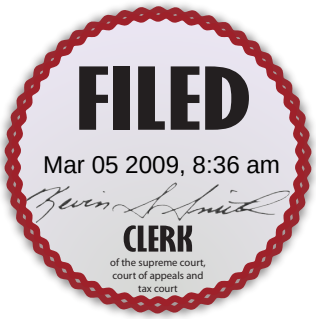

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IN THE
COURT OF APPEALS OF INDIANA

ANTHONY JOHNSON,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 49A02-0806-CR-550
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Linda Brown, Judge
Cause No. 49F10-0707-CM-134388

March 5, 2009

MEMORANDUM DECISION – NOT FOR PUBLICATION

MATHIAS, Judge

Anthony Johnson ("Johnson") was convicted in Marion Superior Court of Class A misdemeanor prostitution and Class C misdemeanor public nudity. Johnson appeals arguing that the evidence is insufficient to support his conviction. We affirm.

Facts and Procedural History

On the evening of July 9, 2007, Officer James Waters ("Officer Waters") was investigating complaints of prostitution. Officer Waters was driving in an unmarked police vehicle when he observed Johnson standing at the corner in an area known for prostitution. Officer Waters circled the block and then pulled up to the curb where Johnson was standing. Johnson then exposed his penis to Officer Waters. Johnson got into the car and Officer Waters told Johnson he was "looking for company." Tr. p. 7. Johnson then asked what Officer Waters wanted to do, and Officer Waters responded that he wanted a "blow job." Id. Johnson nodded his head "okay." Id. Officer Waters told Johnson that he usually paid twenty dollars, and Johnson again nodded his head. Officer Waters again asked if Johnson would perform the sex act for twenty dollars and Johnson replied "twenty is fine." Tr. p. 8. After this discussion, backup officers initiated a traffic stop and arrested Johnson.

A bench trial was held on May 22, 2008, and Johnson was found guilty of Class A misdemeanor prostitution and Class C misdemeanor public nudity. The court sentenced Johnson to 365 days with 325 days suspended for Class A misdemeanor prostitution, and 60 days with 36 days suspended for Class C misdemeanor public nudity to be served concurrently. Johnson now appeals. Additional facts will be provided as necessary.

I. Sufficient Evidence

When we review a claim of sufficiency of the evidence, we do not reweigh the evidence or judge the credibility of the witnesses. Jones v. State, 783 N.E.2d 1132, 1139 (Ind. 2003). We look only to the probative evidence supporting the judgment and the reasonable inferences therein to determine whether a reasonable trier of fact could conclude the defendant was guilty beyond a reasonable doubt. Id. If there is substantial evidence of probative value to support the conviction, it will not be set aside. Id. When reviewing a claim of entrapment, we use the same standard that applies to other challenges to the sufficiency of evidence. Ferge v. State, 764 N.E.2d 268, 270 (Ind. App. 2002) (citing Dockery v. State, 644 N.E.2d 573, 578 (Ind. 1994)). Additionally, a judgment will be sustained based on circumstantial evidence alone if the circumstantial evidence supports a reasonable inference of guilt. Maul v. State, 731 N.E.2d 438, 439 (Ind. 2000).

A. *Johnson's Prostitution Conviction*

To establish that Johnson committed Class A misdemeanor prostitution, the State was required to prove that Johnson, knowingly or intentionally performed, offered or agreed to perform sexual intercourse or deviate sexual conduct for money or other property. See Ind. Code § 35-45-4-2 (2004 & Supp. 2008).

Johnson argues that he did not agree to perform a sex act for money and claims that "[he] was trying to get to know [Officer Waters], and that was all." Br. of Appellant

at 7. Additionally, he argues that he agreed to perform a sex act before any money was offered or requested. Br. of Appellant at 7-8.

In Harwell v. State, 821 N.E.2d 381, 382 (Ind. App. 2004), police officers canvassed an area known for prostitution. An undercover officer approached the defendant and she entered his car. Id. The undercover officer stated he was looking for fellatio and although she agreed, the defendant refused to discuss money when asked about the price and directed him to an alley. Id. The officer again questioned the defendant, asking her if the act would be more than twenty dollars and she responded "no." Id. We held that even though she was evasive about the price, the evidence was sufficient to show that a meeting of the minds existed between the officer and the defendant to sustain the defendant's conviction for prostitution. Id.

During the bench trial in the case before us, Officer Waters testified that he was driving around in an area of town that had complaints of prostitution. Johnson flashed his genitals to Officer Waters. Once Johnson entered the car, he asked Officer Waters what he wanted to do and Officer Waters responded that he wanted a "blow job" and would only pay twenty dollars. Tr. p. 7. Johnson nodded his head in agreement and this implicit act establishes a meeting of the minds between Johnson and Officer Waters. This evidence is sufficient to support Johnson's Class A misdemeanor prostitution conviction.

B. *Johnson's Public Nudity Conviction*

To establish that Johnson committed Class C misdemeanor public nudity, the State was required to prove that Johnson, knowingly or intentionally appeared in a public place in a state of nudity. See Ind. Code § 35-45-4-1.5 (2004 & Supp. 2008). Johnson argues that he did not expose himself to Officer Waters. Br. of Appellant at 6.

Officer Waters testified Johnson exposed his penis to him when he pulled up along side the curb. Tr. p. 6. Officer Waters stated that intersection was well lit and he could clearly see Johnson's penis. Tr. p. 7. This evidence is sufficient to establish that Johnson committed Class C misdemeanor public nudity. Johnson's argument that he did not expose himself is merely a request to reweigh the evidence and the credibility of the witnesses, which our court will not do.

C. *Johnson's Entrapment Claim*

Finally, we address Johnson's entrapment claim. The defense of entrapment may be used if "the prohibited conduct was the product of a law enforcement officer using persuasion or other means likely to cause the person to engage in the conduct, and the person was not predisposed to commit the offense." See Ind. Code § 35-41-3-9. However, "[c]onduct merely affording a person the opportunity to commit the offense does not constitute entrapment." Id.

The defense of entrapment turns on the defendant's state of mind, or "whether the 'criminal intent originated with the defendant.'" Ferge v. State, 764 N.E. 2d 268, 271 (Ind. App. 2002), (citing Kats v. State, 559 N.E.2d 348, 353 (Ind. App. 1990)), trans.

denied. Once a claim of entrapment has been made, the burden shifts to the State to demonstrate the defendant's predisposition to commit the crime beyond a reasonable doubt. Ferge, 764 N.E.2d at 271. The following factors are important in determining whether a defendant was predisposed to commit the charged crime:

> 1) the character or reputation of the defendant, 2) whether the suggestion of criminal activity was originally made by the government, 3) whether the defendant was engaged in criminal activity for profit, 4) whether the defendant evidenced reluctance to commit the offense, overcome by government persuasion, and 5) the nature of the inducement or persuasion offered by the government.

Id. (citing U.S. v. Fusko, 869 F.2d 1048, 1052 (7th Cir. 1989)).

In the present case, the State proved beyond a reasonable doubt that Johnson had a predisposition to commit prostitution. Johnson initiated the transaction by exposing his genitals to Officer Waters. Tr. p. 6. Additionally, Johnson voluntarily got into Officer Waters' car. Id. Under these facts and circumstances, the State presented sufficient evidence at trial to prove that Johnson was predisposed to commit the crime of prostitution.

Conclusion

The evidence is sufficient to support Johnson's convictions for Class A misdemeanor prostitution and Class C misdemeanor public nudity. Additionally, the State proved beyond a reasonable doubt that Johnson was predisposed to commit prostitution and that he was not entrapped by Officer Waters.

Affirmed.

BAILEY, J., and BARNES, J., concur.